Supreme Court, U.S.
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No. 99-80

IN THE

Supreme Court of the United States

FRANCES CALLAHAN,

Petitioner,

v.

SUFFOLK COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NEW YORK COURT OF APPEALS

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether, absent a conflict with federal law, the Supremacy Clause of the United States Constitution is violated by state legislation where Congress has not, by expression or implication, pre-empted state involvement.

Whether axiomatic rules of statutory construction are worthy of review.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Cited Authorities	iii
Table of Appendices	vii
Statement of the Case	1
A. Misstatements Made in the Petition	1
Summary of the Argument	4
Reasons for Denying the Writ	6
I. The Court Below Fully Considered And Correctly Decided The Issues.	6
II. This Case Presents No Conflict That Warrants Supremacy Clause Review.	9
III. This Case Presents No Opportunity For The Court To Clarify Well Established Principles Of Statutory Construction.	13
Conclusion	20

TABLE OF CITED AUTHORITIES

Page

Cases:

Badaracco v. C.I.R., 464 U.S. 386, 104 S. Ct. 756, 78 L. Ed. 2d 549 (1983) 18

Bates v. United States, 522 U.S. 23, 118 S. Ct. 285, 139 L. Ed. 2d 215 (1997) 18

Brogan v. United States, 522 U.S. 398, 118 S. Ct. 805, 139 L. Ed. 2d 830 (1998) 16, 18

Brown v. Gardner, 513 U.S. 115, 115 S. Ct. 552, 130 L. Ed. 2d 462 (1994) 17

Jarecki v. G. D. Searle & Co., 367 U.S. 303, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961) 17

Calvanese v. Calvanese and Matter of Callahan, 93 N.Y. 2d 111, 688 N.Y.S.2d 479, __ N.E.2d __ (New York, 1999) 6, 7

Cricchio v. Pennisi and Link v. Town of Smithtown, 90 N.Y.2d 296, 660 N.Y.S.2d 679, 683 N.E.2d 301 (N.Y. 1997) 12, 13, 16

English v. General Electric Company, 496 U.S. 72, 110 S. Ct. 2270, 110 L. Ed. 65 (1990) 10

Freytag v. C.I.R., 501 U.S. 868, 111 S. Ct. 2631, 115 L. Ed. 2d 764 (1991) 17

Cited Authorities

Page

Jarecki v. G. D. Searle & Co., 367 U.S. 303, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961) 17

Patricia Callahan, as Mother and natural guardian of Frances Callahan, an infant over the age of fourteen (14) years v. Good Samaritan Hospital, et al., Suffolk County (New York) Index No. 17307/85 1

Texas & Pacific R. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 27 S. Ct. 350, 51 L. Ed. 553 (1907) 17

Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Automobile, Aerospace, Agricultural Implement Workers of America, Intern. Union, 523 U.S. 653, 118 S. Ct. 1626, 140 L. Ed. 2d 863 (1998) 17

Statutes:

42 U.S.C. § 1396, *et seq.* 7, 10

42 U.S.C.A. § 1396a 18

42 U.S.C. § 1396a(25)(A) 6, 7

42 U.S.C. § 1396a(25)(B) 6, 7

42 U.S.C. § 1396a(a)(25)(I) 14

Cited Authorities

	Page
42 U.S.C. § 1396k	12, 14, 17, 18
42 U.S.C. § 1396k(a)(1)(A)	6, 14
42 U.S.C. § 1396k(a)(1)(C)	6
42 U.S.C. § 1396p	11
42 U.S.C. § 1396p(a)	12
42 U.S.C. § 1396p(a)(1)	11
42 U.S.C. §1396p(d)(1)	14
42 U.S.C. §1396p(d)(2)	15
42 U.S.C. §1396p(d)(3)	15
42 U.S.C. §1396p(d)(4)	15
42 U.S.C. § 1396p(d)(4)(A)	14
New York Estate Powers and Trust Law § 7-1.12	3
New York Mental Hygiene Law Article 81	1
New York Social Services Law § 104-b	1, 11
New York Social Services Law § 363, *et seq.*	7
New York Social Services Law § 366(4)(h)(1)	12

Cited Authorities

Page

New York Social Services Law § 367-a(2)(b) 12

New York Social Services Law § 369(2)(a) 12

United States Constitution:

Art. VI, cl. 2 9

Other Authorities:

42 C.F.R. § 433 19

42 C.F.R. § 433.147(b)(4) 13, 19

S. Rep. No. 146, 99th Cong, 2d Sess. 1, 312, reprinted in 1986 U.S. Code Cong. & Admin. News 42, 279 7

TABLE OF APPENDICES

Page

Appendix — Relevant State Statute 1a

STATEMENT OF THE CASE

The relevant facts of this case have been fairly and faithfully set forth in the Opinion below. In contrast, the Petition presents a distorted and inaccurate statement of the relations between the parties, the facts, and the import of relevant law.

A. Misstatements Made in the Petition

This case is about Medicaid lien enforcement. The fund of money at issue here was received from a medical malpractice action, in which Petitioner (hereinafter, "Callahan") sued a hospital and several health professionals in 1985.[1] A lien pursuant to New York Social Services Law § 104-b was filed at the time she applied for Medical Assistance. (The text of this section is set forth as "Appendix A.") The law suit was settled in 1991, without the required notice to the Department of Social Services (hereinafter the "Program" or the "Department.") The gross settlement amount was $375,000, by all defendants. After attorneys' fees and disbursement, Callahan netted $244,394.99. All the proceeds were allocated to compensate the plaintiff for her "pain and suffering." The Program's lien was "vacated" by the Trial Court — without an opportunity to be heard being afforded to the Program.

The Program remained ignorant of the settlement until 1993, when the instant New York Mental Hygiene Law Article 81 proceeding was initiated by Callahan with a

1. *Patricia Callahan, as Mother and natural guardian of Frances Callahan, an infant over the age of fourteen (14) years v. Good Samaritan Hospital, et al.*, Suffolk County (New York) Index No. 17307/85.

Petition addressed to the New York Supreme Court in Queens County, the place of her residence at the time. Chiefly, the petition sought to establish a supplemental needs trust in order to shelter the fund. The Program was necessarily notified because Callahan had remained a Suffolk County Medicaid recipient. The Program demanded that its lien be addressed. So began the controversy, which Callahan asks this Court to hear.

The request for this Court's attention is part of Petitioner's[2] continued effort to squelch her community's attempt to recover on a commitment she made in a time of great need. When she could not financially meet her medical needs, occasioned by the tortious acts of the defendants in her personal injury action, she turned to her community for help. And help she received, through the offices of the Suffolk County Department of Social Services, the local agent of the New York State Medicaid Program. As a condition of Medicaid eligibility, she was required to, and did, assign her rights to receive any payment for medical damages to the Program. This included the proceeds of her lawsuit, up to an amount equal to Program expenses. She had a duty to cooperate with the program in collecting all such third party benefits. "Cooperation" included notification to the Department of the pending settlement.

At the time of settlement of her personal injury action she chose not to notify the Program of that event. Not only did she take all of the net proceeds, she also stayed on Medicaid, even though receipt of the funds would have

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2. All of the actions ascribed here to Frances Callahan were actually done by her mother and guardian of her property, Patricia Callahan.

disqualified her.[3] Not only did she dishonor the assignment, she failed to reveal assets, giving her community a "double hit." None of this was discovered until she attempted to access the community's further largess, in the form of the benefits associated with a supplemental needs trust. Now, in this Petition, she claims that the fund of money is her property, and therefore not subject to the enforcement of the lien. This suggestion, made throughout the Petition, is contrary to the findings of fact of the court below. Callahan ignored the Program's lien at the time of settlement, and now attempts to use that misdeed as a functional fact to distinguish her case from all others. No appropriate basis, in fact or in law, is presented which warrants this Court's review.

Respondent objects to the consideration of certain references made in the Petition that were not part of the proceeding below. No support is found in the record for Petitioner's statements concerning the rejection by federal administrators of a "priority standard." (Petition, Page 8.) Nor is the rationale ascribed to the New York State Legislature, in its enactment of Estate Powers and Trust Law § 7-1.12, a matter of record. (Petition, Pages 5 and 6.)

Finally, Callahan has been less than complete in her citation, at page 9, of the "Richardson" memorandum of June 5, 1996. The next sentence after the matter presented from Petitioner's Appendix "G," page "A33" is functional to the Court's determination of the Petition. After the sentence:

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3. Thus Petitioner's assertion, at page 4, and again at page 5, that she "realized that a tort settlement of $244,000 was at risk of being quickly exhausted by paying for her daughter's extraordinary health care needs," is quite false.

> Thus, if an individual is already Medicaid eligible at the time he or she receives a third party settlement or judgment, the State has claim to any portion of the proceeds which were intended to pay for medical care for the individual that is covered by Medicaid.

the paragraph continues:

> If the individual negotiates with the third party to place these amounts in trust or otherwise fails to help make the amounts available to the State, then that individual has violated section 1912 which requires the individual to cooperate with the State in obtaining payments for medical care from a third party. The individual would lose eligibility, regardless of the trust provisions and exceptions in sections 1917(d)(4)(A) and (C).

SUMMARY OF THE ARGUMENT

The Petition presents no issue worthy of this Court's review. The decision of the court below is not in conflict with any other decision of a federal Circuit Court of Appeals nor a state court of last resort. No important federal question is presented which needs this Court's elucidation or correction. No question of national import or interest is focused. The decision below is correct. The Petition should be denied.

The exposition of the correctness of the ruling below is a simple proposition. As the Program demonstrates here, in Point I, all of the elements of New York State's Medicaid Program which lead inexorably to the conclusion reached

below are parented by provisions of the federal guidelines for state programs. Under the state and federal statutory framework, the Medicaid Program lien must be satisfied from the entire amount of the personal injury settlement before a plaintiff/recipient receives any money with which to fund a supplemental needs trust. This is the product of the statutory mandate for assignment and subrogation, designed to insure that Medicaid is the "payor of last resort."

Callahan's contention that New York's Medicaid lien procedure violates the Supremacy Clause of the United States Constitution is the focus of the Program's Point II. There it is argued that the state program provisions do not conflict with federal directives. The Petitioner's argument is based on the false premise that the liens in question incumber property of recipients. They do not. Only the property of liable third parties is subject to lien enforcement.

The final concern here is Callahan's assertions (Petition Points II and III) that the court below has failed to properly interpret two aspects of the federal Medicaid statute. Each of these contentions is addressed in Point III where the Program analyzes the strained rationale set forth in the Petition. No interpretive principle was misapplied. This Court's review can only lead to a confirmation of existing and time honored axioms of statutory construction.

There being no compelling reason to grant certiorari, the Petition should be denied.

REASONS FOR DENYING THE WRIT

I.

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THE ISSUES.

The controversy presented to the court below through this case, and another,[4] concerned the extent to which a personal injury settlement fund is available to satisfy a Medicaid lien. The Court traced the responsibility of the Program to pursue liable third parties for recoupment of medical expenses, as that responsibility is found in the federal Medicaid directives. Specifically, state Medicaid programs are obligated under 42 U.S.C. § 1396a(25)(A) and (B) to "take all reasonable measures to ascertain the legal liability of third parties * * * to pay for care and services available under the plan."

In this regard, Medicaid recipients are required to do two things. They must assign to the State any right to seek reimbursement from any third party up to the amount of medical assistance paid. 42 U.S.C. § 1396k(a)(1)(A). They must also "cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan." 42 U.S.C. § 1396k(a)(1)(C).

The required assignment enables the program to pursue any liable third party for payment of medical expenses. This effort is required to insure that the Program is the "payor of

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4. *Calvanese v. Calvanese and Matter of Callahan*, 93 N.Y. 2d 111, 688 N.Y.S.2d 479, __ N.E.2d __ (New York, 1999).

last resort."[5] To that end, the federal direction to "pursue" recoupment is general in scope. No specific method is dictated because the nature of the third party claims efforts can be quite diverse, ranging from the processing of first party insurance forms to actually commencing a plenary action. The federal mandate in this regard may fairly be paraphrased as: Go forth and seek reimbursement, wherever it may be found, by whatever means are appropriate.

The Program did not argue below, and does not assert here, that, as part of the responsibility to "cooperate" with the reimbursement effort, recipients are required to commence tort claim actions against persons who have caused the injuries for which Medicaid payments were made. However, there is no prohibition contained in either the federal or New York State statutory scheme against encumbering, by lien, any law suit which a recipient actually does commence against such a liable third party. Since the lien encumbers the settlement or verdict assets of the defendant, its filing constitutes "pursuit" of a liable third party. The Program may indeed commence an action against the liable third party, as subrogee of the recipient, but the federal directive does not require it, especially when the more

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5. Medicaid is a jointly funded Federal and State program that pays for necessary medical care of qualifying indigent persons (*see* 42 U.S.C. § 1396, *et seq.*; Social Services Law § 363, *et seq.*). In order to contain program costs and ensure that Medicaid remains the "payor of last resort" (S. Rep. No. 146, 99th Cong, 2d Sess. 1, 312, reprinted in 1986 U.S. Code Cong. & Admin. News 42, 279), States must "take all reasonable measures to ascertain the legal liability of third parties * * * to pay for care and services available under the plan," and seek reimbursement from them (42 U.S.C. § 1396a[25][A], [B]). *Calvanese v. Calvanese*, 93 N.Y.2d 111,116, 688 N.Y.S.2d 479, 481, N.E.2d __, __ (N.Y. 1999).

efficacious procedure for liens is available under state law. In either event, the Program acts as subrogee, having come to that status by means of the required assignment to the Program of all third party benefits.

When liens are satisfied, settlement proceeds go directly to the Program from the defendant. They do not pass through the hands of the recipient/plaintiff. These liens are not filed against the assets of recipients, only those of *liable* third parties. What is left of the settlement fund, after attorneys' fees and disbursements, and the satisfaction of the lien, is the property of the plaintiff/recipient. Only this net sum can be settled into a supplemental needs trust, if desired.

The issue of what part of the settlement fund stands to satisfy the lien was resolved by the court below with reference to the New York State Medicaid Program rules. As the court below noted (Petitioner's Appendix A, pages 3-4):

> As an alternative to suing the responsible third party directly, the Department may pursue reimbursement indirectly by placing a lien on personal injury suits brought by a Medicaid recipient against the responsible party (*see*, Social Services Law § 104-b). A Medicaid lien "shall attach to any verdict, decision, decree, judgment, award or final order in any suit, action or proceeding in any court or administrative tribunal of this state respecting such injuries, as well as the proceeds of any settlement thereof," and continues until discharged by the public welfare official (Social Services Law § 104-b[3], [7]). Because section 104-b "is purely procedural," it

> does not alter the agency's substantive right to recover the amount it has expended on behalf of a Medicaid recipient, and the agency's right to recover is the same whether it sues directly or uses a lien. (*Baker v. Sterling*, 39 N.Y.2d 397, 405).

Under this statutory framework, the paramount federal mandate, that the Medicaid Program be the "payor of last resort," is met.

Under the broad statutory federal mandate to seek reimbursement from responsible third parties, there is no justification for limiting the New York State Program in its efficacious use of the lien procedure. Nor is there any justification to modify or annul the state rules concerning lien enforcement. This is especially so here, since Callahan did not to live up to those rules requiring cooperation with the Program in that she failed to notify it of the settlement and concealed her receipt of the proceeds. Certainly, there is no provision of the statutory scheme, as outlined by the court below, which deserves the attention of this Court so as to warrant its grant of the requested Writ of Certiorari. The Petition should be denied.

II.

THIS CASE PRESENTS NO CONFLICT THAT WARRANTS SUPREMACY CLAUSE REVIEW.

This Court's decisions have established that state law is pre-empted under the Supremacy Clause, U.S. Constit., Art. VI, cl. 2, in three circumstances: when Congress has explicitly defined the extent to which its enactments pre-empt state law; when Congress has determined to occupy

the field of governmental regulation so completely that state regulation is precluded; and, when state law actually conflicts with federal law. *English v. General Electric Company*, 496 U.S. 72, 110 S. Ct. 2270, 110 L. Ed. 65 (1990). None of these circumstances is presented by the Petition.

Reference to the very first section of the federal Medicaid enactment, as codified at United States Code, Title 42, Chapter 7, subchapter XIX, § 1396, reveals that neither of the first two "circumstances" is applicable to this joint federal state program. This section reads:

> § 1396. Appropriations
>
> For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States *which have submitted, and had approved by the Secretary, State plans for medical assistance.*

(Emphasis supplied). Clearly, and by definition, the Medicaid Program was not designed by Congress to explicitly

pre-empt state participation in the designated effort. Nor does the federal enactment exclusively occupy the field. In order to participate, states must develop their own plans to meet their own local conditions.

Petitioner suggests that the third circumstance, conflicting federal and state provisions, is presented by the facts of her case. It is not. No such conflict, patent or inherent, results from the state enactment. She asserts that § 1396p(a)(1) of Title 42, prohibits the imposition of a lien against the property of a recipient. It does.[6] However, the lien at issue in this case was not an encumbrance upon any property of Callahan. Liens filed pursuant to New York Social Services Law § 104-b encumber the settlement assets of a liable third party. This is evidenced on the face of the statute. In subsection 2, all notice requirements are geared to notifying the defendant and any liability insurance carrier which might be responsible to pay third party damage claims. The most telling provision is contained in subsection 5(C), where the consequence for not honoring the lien is set forth:

> (c) A person, firm, corporation or insurance carrier that fails to give the notice required by paragraph (a) of this subdivision shall be liable

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6. § 1396p. Liens, adjustments and recoveries, and transfers of assets

> (a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan
>
> (1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, [with exceptions not here relevant]

> to the social services official to the same extent that it would have been liable had such notice been given and the social services official had filed the amended notice of lien provided for in paragraph (b) of this subdivision.

The statutory "blue print" of New York State's recovery plan, complete with reference to the federal directives, is set forth extensively by its highest court in *Cricchio v. Pennisi and Link v. Town of Smithtown*, 90 N.Y.2d 296, 660 N.Y.S.2d 679, 683 N.E.2d 301 (N.Y. 1997). It is the definitive state holding. The Court's analysis integrates the assignment and subrogation provisions of the federal statute with the elements of the New York State Plan. As the Medicaid recipient's assignee (42 U.S.C. § 1396k; Social Services Law § 366[4][h][1]), the program obtains all of the rights that the recipient has as against the third party to recover for medical expenses, including the ability to immediately pursue those claims against the third party. Because the injured Medicaid recipient has assigned her or his recovery rights to the Program, and the Program is subrogated to the rights of the beneficiary (Social Services Law § 367-a[2][b]), the settlement proceeds are resources of the third-party tortfeasor that are owed directly to the Program. Accordingly, the lien on the settlement proceeds attaches to the property of the third party, and thus does not violate the statutory prohibition against imposing a lien against a beneficiary's property until after his or her death (42 U.S.C. § 1396p[a]; Social Services Law § 369[2][a]). As the Court noted, "The flaw in plaintiffs' theory that the lien cannot be satisfied until the recipient's death is that it fails to appreciate this critical distinction between the assets of a responsible third party and assets belonging to the Medicaid recipient." *Cricchio*, 90 N.Y.2d 296, 307, 660 N.Y.S.2d 679, 683, 683 N.E.2d 301 (N.Y.

1997). This is the way the recovery process is intended to work. There is no conflict between federal directives and the New York State Medicaid Plan.

Callahan complains that since she received the net settlement fund, any effort to enforce the Program's right of recovery is an effort to take *her* money. To the extent that her possession of the fund is at all operational to her argument, it is a fact created by her own misdeed[7] in failing to cooperate in recovery efforts, a requirement of Medicaid eligibility. In effect she is asking this Court to make a rule for the benefit of those who do not play by the rules. The Court should reject the request.

The Petition presents no constitutional question, and certainly no conflict between state and federal statutes which warrants Supremacy Clause review. The Petition should be denied.

III.

THIS CASE PRESENTS NO OPPORTUNITY FOR THE COURT TO CLARIFY WELL ESTABLISHED PRINCIPLES OF STATUTORY CONSTRUCTION.

The decision below accurately reflects and correctly employs this Court's often stated canons of statutory construction. Petitioner's contentions are readily dispatched by the application of basic construction principles. No new principle or novel application of an existing principle is presented.

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7. Federal regulations require recipients to "pay to the agency any support or medical care funds received that are covered by the assignment or rights." 42 C.F.R. § 433.147(b)(4).

Callahan references two statutes which, in her assessment, have been ignored by the court below. In her POINT II, she maintains that the use of the word "total" in a section which describes eligibility criteria related to supplemental needs trusts[8] must be found to limit the Program's right to recover from liable third parties as defined in two other sections[9] of the Medicaid enactment. In her POINT III, she alleges that the "assignment statute" (42 U.S.C. § 1396k), which sets forth a recipient's obligations without mentioning the commencement of direct actions against liable third party tortfeasors, *somehow* then requires states to pursue liable third parties for medical reimbursement solely by means of the commencement of direct actions. Each of these contentions is resolved by reference to the most rudimentary tenets of statutory construction.

A. The use of the word "total"

One of the eligibility guidelines for the Medicaid Program is provided in 42 U.S.C. § 1396p subsection (d) "Treatment of trust amounts." The first subparagraph (1) reads:

> (1) *For purposes of determining an individual's eligibility* for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

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8. 42 U.S.C. § 1396p(d)(4)(A).

9. 42 U.S.C. § 1396a(a)(25)(I) concerning the Program's obligation to pursue liable third parties; and 42 U.S.C. § 1396k(a)(1)(A) concerning a recipients obligations to cooperate in that pursuit.

(Emphasis supplied). Subparagraphs (2) and (3), respectively, define various trusts and treat the eligibility of the beneficiaries of those trusts for Medicaid benefits.

Subparagraph (4) provides an exception to these general eligibility rules for a certain class of individuals (disabled individuals under 65 years of age) who are the beneficiaries of a certain type of trust (supplemental needs trusts). It reads, in relevant part:

> (4) This subsection shall not apply to any of the following trusts:
>
> (A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court *if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid* on behalf of the individual under a State plan under this subchapter.

(Emphasis supplied).

The gist of Petitioner's argument is that the use of the phrase "total medical assistance paid," in describing the state's remainder interest in a supplemental needs trust, must be taken to preclude prior payment to the program from any other source — including recoveries made from liable third parties before the creation of the trust. There is no statutory basis for this position.

In support of her argument, Callahan presents only one of this Court's interpretive holdings. The discussion of the holding in *Brogan v. United States*, 522 U.S. 398, 118 S. Ct. 805, 139 L. Ed. 2d 830 (1998), is inapt. The Court in *Brogan* considered the meaning of one word, "any," as it related to the words which it immediately precedes in a statute. She refers to a "literal text doctrine." The interpretive principle applied there is actually that words are entitled to their "ordinary meanings." The Court was not asked to consider how the use of the word "any" affects another section of the enactment in which it is found. Certainly, the Court was not asked to determine whether the use of a term in one section was meant to *interfere* with rights secured in another section. Which, of course, is what Callahan maintains ought to happen here.

The provisions of subsection 4 permit assets held in a supplement needs trust to be excluded when determining the eligibility of individual recipients. Nothing expressed in or implied by those provisions indicates that they were intended to interfere with the different set of rules mandating the assignment of tort recoveries and recoupment from responsible third parties. *Cricchio v. Pennisi and Link v. Town of Smithtown*, 90 N.Y.2d 296, 660 N.Y.S.2d 679, 683 N.E.2d 301 (N.Y. 1997). A plaintiff/recipient can realize no recovery from a personal injury action until the program's lien has been addressed. Therefore, the eligibility parameter concerning what must be done with the remainder interest when the trust terminates cannot affect the Program's recovery rights prior to the creation of the trust. In short, the federal Medicaid eligibility rules do not govern the issue of lien priority — the assignment and subrogation sections control.

Callahan's interpretive analysis also runs afoul of several other of this Court's established canons of construction. These principles are so axiomatic that their recitation is appropriately made seriately. It is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Automobile, Aerospace, Agricultural Implement Workers of America, Intern. Union*, 523 U.S. 653, 118 S. Ct. 1626, 140 L. Ed. 2d 863 (1998). It is an elementary rule of construction that "the act cannot be held to destroy itself." *Texas & Pacific R. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446, 27 S. Ct. 350, 358, 51 L. Ed. 553 (1907). The maxim *noscitur a sociis*, that a word is known by the company it keeps, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress. *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961). The Court must consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme, the meaning of statutory language, plain or not, depends on context. *Brown v. Gardner*, 513 U.S. 115, 118, 115 S. Ct. 552, 555, 130 L. Ed. 2d 462 (1994). The Court is deeply reluctant to interpret statutory provision so as to render superfluous other provisions in same enactment. *Freytag v. C.I.R.*, 501 U.S. 868, 111 S. Ct. 2631, 115 L. Ed. 2d 764 (1991).

B. Pursuit of liable third parties under the "Assignment" statute

Petitioner argues that the language of 42 U.S.C.A. § 1396k (Assignment, enforcement, and collection of rights

of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State) requires the Program to commence direct actions against liable third parties. It does not. It does not even require the program to pursue liable third parties for payment. The mandate to "pursue" is found in the "requirements for State Plans" section in 42 U.S.C.A. § 1396a, "State plans for medical assistance." Rather, § 1396k specifies the obligations of recipients to cooperate with the Program in pursuit of liable third parties.

Essential to Petitioner's argument is the equation that "pursuit" equals the commencement of direct actions. There is no support in the federal statutory scheme for that contention. No reference to "direct actions" is found anywhere in the statute. In fact, no particular recovery device is mentioned at all. Her argument is actually, "since recipients are not required to pursue liable third parties directly, the Program must be so required — and the only available means of pursuit is the commencement of direct actions." This is an unsupported leap, introducing elements not found in the statute.

The *Brogan* holding, invoked again by Callahan on this point, is even less applicable here than in association with her "total" argument. On this issue, she advances no statutory "text" for the Court's interpretive analysis. We are truly left in the world of axiomatic propositions. The Court ordinarily resists reading words or elements into a statute that do not appear on its face. *Bates v. United States*, 522 U.S. 23, 118 S. Ct. 285, 139 L. Ed. 2d 215 (1997) Courts are not authorized to rewrite a statute even where they might deem its effect susceptible of improvement. *Badaracco v. C.I.R.*, 464 U.S. 386, 104 S. Ct. 756, 78 L. Ed. 2d 549 (1983).

Ostensibly because there is no appropriate statutory language in support of her argument, Callahan makes extensive reference to the regulatory scheme (42 C.F.R. § 433) which not only fails to support her argument, it actually destroys it. The regulation does not mandate any particular form of pursuit, specially the commencement of direct actions. In fact, it requires recipients to "Pay to the agency any support or medical care funds received that are covered by the assignment of rights."[10] This she has steadfastly refused to do. Her credibility, if not her standing, is destroyed by her continued refusal to honor this obligation and remit the funds she collected.

Callahan presents no principle of statutory construction which was overlooked by the court below. Neither is any compelling need for a "new" rule of construction evident from this case. Since this case presents only the opportunity to restate axiomatic propositions of established rules, the requested Writ should not be granted.

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10. 42 C.F.R. § 433.147(b)(4).

CONCLUSION

The Petition for a Writ of Certiorari to the New York State Court of Appeals should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — RELEVANT STATE STATUTE

NEW YORK STATE SOCIAL SERVICES LAW § 104-b

McKinney's Social Services Law § 104-b

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED SOCIAL SERVICES LAW
CHAPTER 55 OF THE CONSOLIDATED LAWS
ARTICLE 3 — LOCAL PUBLIC WELFARE ORGANIZATION; POWERS AND DUTIES
TITLE 6 — POWERS TO ENFORCE SUPPORT

§ 104-b. Liens for public assistance and care on claims and suits for personal injuries

1. If a recipient of public assistance and care shall have a right of action, suit, claim, counterclaim or demand against another on account of any personal injuries suffered by such recipient, then the public welfare official for the public welfare district providing such assistance and care shall have a lien for such amount as may be fixed by the public welfare official not exceeding, however, the total amount of such assistance and care furnished by such public welfare official on and after the date when such injuries were incurred.

The welfare commissioner shall endeavor to ascertain whether such person, firm or corporation alleged to be responsible for such injuries is insured with a liability insurance company, as the case may be, and the name thereof.

2. No such lien shall be effective, however, unless a written notice containing the name and address of the injured

the person, firm or corporation alleged to be liable to the injured party for such injuries, together with a brief statement of the nature of the lien, the amount claimed and that a lien is claimed upon the said right of action, suit, claim, counterclaim or demand by the public welfare official be served prior to the payment of any moneys to such injured party, by registered mail upon such person, firm or corporation, and his, its or their attorney, if known, and upon any insurance carrier which has insured such person, firm or corporation against such liability. A copy of the notice of lien shall be mailed to such carrier at least twenty days prior to the date on which such carrier makes a payment to the injured party. Except as against such carrier, the effectiveness of the lien against any other party shall not be impaired by the failure to mail the required notice to such carrier. In addition, a true copy of such notice shall be served by regular mail to the welfare recipient and to his attorney, if known. Such mailing shall be deemed to be effective, notwithstanding any inaccuracy or omission, if the information contained therein shall be sufficient to enable those to whom the notice is given to identify the injured recipient and the occurrence upon which his claim for damages is based.

3. Upon the service of the notice, as aforesaid, the local public welfare official shall file a true copy thereof in the office of the clerk of the county in which his office is located, and, thereupon the lien of the public welfare official in the amount therein stated shall attach to any verdict, decision, decree, judgment, award or final order in any suit, action or proceeding in any court or administrative tribunal of this state respecting such injuries, as well as the proceeds of any

settlement thereof, and the proceeds of any settlement of any claim or demand respecting such injuries prior to suit or action.

4. An amended notice of lien may be served and filed by such public welfare official in the same manner and subject to the provisions of this section governing the notice of lien originally served and filed pursuant to this section.

5. (a) The person, firm, corporation or insurance carrier, having notice that a social services official has served and filed a notice of lien, and intending to make payment on the personal injury claim upon which the lien was filed, shall notify the social services official by certified or registered mail, at least ten days prior to the date such payment is proposed to be made, of the amount and date thereof.

(b) Notwithstanding any inconsistent provision of this section, the social services official shall have the right to serve and file by certified or registered mail, within five days after receipt of such notice, excluding Saturdays, Sundays, and holidays, an amended notice of lien to include the amount of public assistance and care furnished to the recipient after the date such official served and filed the notice of lien or the last previous amendment thereof.

(c) A person, firm, corporation or insurance carrier that fails to give the notice required by paragraph (a) of this subdivision shall be liable to the social services official to the same extent that it would have been liable had such notice been given and the social services official had filed the amended notice of lien provided for in paragraph (b) of this subdivision.

6. Such lien may be enforced by action against those alleged to be liable for such injuries, as aforesaid, by the local public welfare official in any court of appropriate jurisdiction.

7. The aforesaid lien shall be valid and effective, when the notice thereof and the statement are served and filed as aforesaid, and shall continue until released and discharged by the local public welfare official by an instrument in writing and filed in the said county clerk's office, and no release, payment, discharge or satisfaction of any such claim, demand, right of action, suit or counterclaim shall be valid or effective against such lien.

8. The county clerk shall, at the expense of the county, provide a suitable book with proper index, to be called the public welfare lien docket, in which he shall enter the names of the public welfare official and the recipient, the date and place of the accident and the name or names of those alleged to be liable for such injuries, as aforesaid.

9. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subject and subordinate to the lien on the amount recovered by verdict, report, decision, judgment, award or decree, settlement or compromise, of any attorney or attorneys retained by any such injured person to prosecute his claim for damages for personal injuries, having or acquiring by virtue of such retainer a lien on the cause of action of any such injured person, or on the verdict, report, decision, judgment, decree made in, or any settlement or compromise of, any such action or claim for damages for personal injuries.

10. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subordinate to the lien of any hospital claimed under and to the extent recognized by section one hundred eighty-nine of the lien law, but only for treatment, care and maintenance given, prior to or in excess of the public assistance and care granted by the public welfare official.

11. The provisions of this section shall not be deemed to adversely affect the right of a public welfare official who has taken an assignment of the proceeds of any such right of action, suit, claim, counterclaim or demand, to recover under such assignment the total amount of assistance and care for which such assignment was made.

12. The provisions of this section to the contrary notwithstanding, the lien herein created shall not apply with respect to any claim or benefits payable to the recipients of any form of public assistance or care, part of which is paid for by the government of the United States or any agency thereof when, in the opinion of the commissioner, such lien would jeopardize the continuation of such federal contribution.

13. The provisions of this section to the contrary notwithstanding, the public welfare official may in his discretion release to the injured person an amount not to exceed the cost of two years' maintenance from the lien herein created.

This section shall not apply to any claim or award which is or may be allowed pursuant to the provisions of the workmen's compensation law or the volunteer firemen's benefit law.